

CITY COUNCIL PROCESS FOR CONSIDERING AN APPEAL OF A PLANNING COMMISSION DECISION

An appeal is a request to the City Council for reconsideration of a project. In addition to the materials provided at the Planning Commission hearing, the appellant has provided additional information justifying support for their appeal and the reasons why they feel that the Planning Commission action was not appropriate. Staff has provided an addendum to the original staff report in response to issues raised. In essence, you have both sides of the story. In addition, this project has been noticed for a public hearing and the public has an opportunity to provide both written and verbal comments through the public hearing portion of this process.

There are several alternatives the City Council has on appeal, which can be discussed in more detail during the appeal hearing. Though, the City Council is holding a brand new hearing on the project, in essence you are determining whether there is a basis of fact that the Planning Commission did not make an appropriate decision. You have the ability to: (1) uphold the Planning Commission decision, (2) modify the Planning Commission decision, or (3) overturn the Planning Commission decision. If substantial new information is submitted as part of the appeal the City Council could also send this back to the Planning Commission for their reconsideration. Zoning Ordinance §17.72.100 allows the Planning Commission's action to be reversed or modified only by a majority vote of the entire Council (a minimum of three votes).

It is the appellant's responsibility to demonstrate why the Planning Commission's decision should be overturned. The burden of proof remains the responsibility of the appellant to qualify his concerns. The appellant's justification for appeal is included in the letter of appeal, as well as previous and subsequent submittals.

At some point in the hearing process, you will have enough questions answered and information provided that will give you a clear picture of (1) the City's Zoning and General plan requirements as it pertains to this project; (2) the applicant's project; (3) the Planning Commission's issues; and (4) the appellant's concerns. After this point, it is recommended that the public hearing portion of the process be closed to allow a time for discussion and decision by the City Council. Even though the City Council may be taking one action on this project, in essence, you are deciding (1) whether the appellant raises concerns that need to be taken into further consideration and (2) whether the proposed project by the applicant is consistent with City requirements.

As part of the included original staff report, there are lists of findings that were made by the Planning Commission for the project for both the Conditional Use Permit and the Design Review / View Protection. These are all taken directly from the Trinidad Zoning Ordinance. The staff report to the Planning Commission includes the wording of these findings in a manner that supported approval of the proposed project. The staff report also included findings relative to the City's Zoning Ordinance requirements, slope stability, sewage, etc. If the Council upholds the Planning Commission's action and denies the appeal, these findings need to be included in the action.

Staff Recommendation:

The project is consistent with the City's Zoning Ordinance and General Plan and the necessary findings for granting approval of the project can be made. Should the City Council find that the Planning Commission acted appropriately and that the Use Permit and Design Review/View Protection Findings can be made, then staff recommends that the City Council deny the appeal and approve the project with a motion similar to the following:

Based on application materials, information and findings included in original and appeal staff reports, I move to adopt the information and required findings and approve the project as submitted and as conditioned in the staff report.

Alternative Motion for Denial

If the City Council does not agree with staff's analysis, or if the public presents additional evidence that conflicts with the information and findings contained in the staff report(s), the Council may choose to uphold the appeal and deny the project. In the past, it has been the City Council's policy that when action is taken to support an appeal request and overturn a Planning Commission action, that supporting findings be verbalized prior to that action. If the Council does decide to uphold the appeal and deny the project, that decision should be based on specific findings from the staff report that can not be made. The Council should specifically state their reasons for denial and which finding(s) can not be made. These findings do not have to be limited to those required findings contained in the staff report, but could also reference conflicts with City regulations. A motion could be similar to the following:

Based on public testimony and information included from the appellant, I find that Use Permit / Design Review / View Protection Finding(s) “---” can not be made because ---, and I move to uphold the appeal and deny the project.

These reasons and findings will be noted by staff and written up in final action format to be approved by the City Council at a subsequent Council meeting. This will not affect the timing of denial of the project, which will be considered to have occurred at the meeting when the motion is made. But the specific wording should be formally approved at a later meeting for the administrative and legal record.